

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

Original Side Appeal Nos. 22, 28 and 129 2018

O.S.A. No. 22 of 2018

M/s. Nakoda Foundation & Development Pvt Ltd
represented by its Director
Mr. Gatraj Jain
No.97, Narayana Mudali Street
Sowcarpet, Chennai - 600 079 .. Appellant/4th Respondent

Versus

1. Mrs. Kamala Muthiah
2. Mrs. Arti Meenakshi @ Arti Meenakshi Muthiah
3. Mr. Tarun Ghani
4. Ms. Nandini Valli
5. M/s. Surakshi Traders Pvt Ltd
represented by its Director
Mr. Vikram Kumar
No.97, Narayana Mudali Street
Sowcarpet, Chennai - 600 079 ..2 to 4 Respondents/
Respondents 1 to 3

O.S.A. No. 28 of 2018

M/s. Surakshi Traders Pvt Ltd
represented by its Director
Mr. Vikram Kumar
No.97, Narayana Mudali Street
Sowcarpet, Chennai - 600 079 .. Appellant/5th Respondent

Versus

1. Mrs. Kamala Muthiah
2. Mrs. Arti Meenakshi @ Arti Meenakshi Muthiah
..2 to 4 Respondents/
1 to 3 Respondents
3. Mr. Tarun Ghani
4. Ms. Nandini Valli

5. M/s. Nakoda Foundation & Development Pvt Ltd
represented by its Director
Mr. Gatraj Jain
No.97, Narayana Mudali Street
Sowcarpet, Chennai - 600 079 ..5th Respondent/
4th Respondent

O.S.A. No. 129 of 2018

1. Mrs. Arti Meenakshi @ Arti Meenakshi Muthiah
2. Mr. Tarun Ghani .. Appellants/Respondents 1 & 2

Versus

1. Mrs. Kamala Muthiah1st Respondent/Applicant
2. Ms. Nandini Valli2nd Respondent/3rd Respondent

3. M/s. Nakoda Foundation & Development Pvt Ltd
represented by its Director
Mr. Gatraj Jain
No.97, Narayana Mudali Street
Sowcarpet, Chennai - 600 079

4. M/s. Surakshi Traders Pvt Ltd
represented by its Director
Mr. Vikram Kumar
No.97, Narayana Mudali Street
Sowcarpet, Chennai - 600 079 ... 3 & 4 Respondents/
4-5 Respondents

Original Side Appeals filed under Order XXXVI Rule XI of the Madras High Court Original Side Rules against the order dated 18.12.2017 passed by this Court in O.A. No. 1187 of 2017 in O.A. No. 466 of 2015 in C.S. No. 353 of 2015.

Prayer in OA.1187/2017 Original Application praying that this Ho'ble court pleased to pass an order of interim injunction restraining the respondents/defendants their men, agents servants or any other person or persons claiming under or through them from interfering with the applicant/plaintiff's peaceful possession and enjoyment of the 'Bedtord House' situate at Door No.9, Old.No.5, Raja Annamalai Road, Purasawalkam, Chennai 600 084, morefully described in the schedule items 1 to 5 appended to the Judge's Summons, including water and sewerage connections, power supply cable laid in the premises, corporation water supply sump, water supply, bore well etc and or altering the physical features of the said property, pending disposal of the application for impleading.

through them from interfering with the applicant/plaintiff's peaceful possession and enjoyment of the 'Bedtord House' situate at Door No.9, Old.No.5, Raja Annamalai Road, Purasawalkam, Chennai 600 084, including impress and express to the property morefully described in the schedule items 1 to 5 appended to the Judge's Summons pending disposal of he suit.

Prayer in CS.353/2015: Suit filed by the plaintiff prays for a judgment and decree as against the defendants herein:-

a) For a Declaration that the Settlement Deed dated 11.05.2012 and registered as Document No.1854 of 2012, SRO, Purasawalkam, as illegal, invalid and non-est in the eyes of law and consequently shall not be binding upon the plaintiff in respect of the plaint Schedule 'C' Property mentioned hereunder,

b) For a Declaration that the Settlement Deed dated 11.05.2012 and registered as Document No.1853 of 2012, SRO, Purasawalkam, as illegal, invalid and non-est in the eyes of law and consequently shall not be binding upon the plaintiff in respect of the Plaint Schedule 'D' property mentioned hereunder,

c) For a permanent injunction, restraining the defendants 1 to 3, their men, agents servants or any person or persons claiming through them, from interfering with the plaintiff's peaceful possession, occupation and enjoyment of the plaint Schedule 'A' item No.1 to 5 properties,

d) For a permanent injunction, restraining the defendants 1 and 2 their men, agents servants or any person or persons claiming through them, from encumbering or alienating or developing or dealing with the plaint schedule 'A' item No. 1 to 5 properties, either by way of sale, joint development, mortgage, lease or charge etc.,

e) For a Mandatory injunction, directing the defendants 1 and 2 to remove all the offending structures which have been erected in plaint Schedule 'A' item No.1 to 5 properties, pursuant to the interim injunction dated 12.2.2015 granted in I.A.No.2079 of 2015 in O.S.No.834 of 2015, which was subsequently recalled by an order of status quo dated 16.2.2015, by V Asst. City Civil Court, Chennai.

f) Grant such further or other reliefs,

g) for costs of the suit.

O.S.A. No. 22 of 2018

For Appellants

: Mr. T.R. Rajagopalan, Senior Advocate
for Mr. Jayesh B. Dolia

For Respondents

<https://hcservices.ecourts.gov.in/hcservices/>

: Mr. R. Thiyagarajan for R1
Mr. K.P. Hemanth Kumar for RR2 & 3
Ms. G. Sumitra for R4
Ms. Geethanjali for R5

O.S.A. No. 28 of 2018

For Appellants :Ms. Geethanjali

For Respondents :Mr. R. Thiagarajan for R1
Mr. K.P. Hemanth Kumar for RR2 & 3
Ms. G. Sumitra for R4
T.R. Rajagopalan, Senior Advocate
for Mr. Jayesh B. Dolia for R5

O.S.A. No. 129 of 2018

For Appellants :Mr. K.P. Hemanth Kumar for RR2 & 3

For Respondents :Mr. R. Thiagarajan for R1
Ms. G. Sumitra for R2
T.R. Rajagopalan, Senior Advocate
for Mr. Jayesh B. Dolia for R3
Ms. Geethanjali for R4

COMMON JUDGMENT

(Judgment of the Court was delivered by R. Subbiah, J)

All these Original Side appeals are filed against the common order dated 18.12.2017 passed by the learned single Judge in O.A. No. 1187 of 2017 in O.A. No. 466 of 2015 in C.S. No. 353 of 2015.

2. The suit in C.S. No. 353 of 2015 was filed by Mrs. Kamala Muthiah against (i) Mrs. Arti Meenakshi @ Arti Meenakshi Muthiah (ii) Mr. Tarun Ghai and (iii) Ms. Nandini Valli praying to declare the Settlement Deeds dated 11.05.2012 executed by the plaintiff herself are null and void and for a consequential permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the plaint schedule mentioned property or from in any manner alienating, encumbering or developing the said property. Thus, the suit was filed by the plaintiff against her two daughters, who are defendants 1 and 3 in the suit. The second defendant is the husband of the first defendant.

3. Pending suit, the plaintiff has filed O.A. No. 466, 467 and 468 of 2015 in C.S. No. 353 of 2015 for interim injunction. The prayer in O.A. No. 466 of 2015 is to grant an order of interim injunction restraining the respondents/defendants, their men, agents, servants or any other person or persons claiming through them from interfering with the applicant/plaintiff's peaceful possession and enjoyment of the "Bedford House" situated at Door No.9, Old No.5, Raja Annamalai Road, Purasawalkam, Chennai - 600 084, including ingress and egress to the property, morefully set out in the schedule item No.1 to 5 to the Judges summons. The

Plaintiff has also filed Application No. 3024 of 2015 praying to appoint an advocate commissioner to inspect and note down the physical features of the entire property. Accordingly, as per the order passed by the learned single Judge, an Advocate Commissioner was appointed, who had also inspected the property and submitted his reports.

4. During the pendency of the suit, the first and second defendant have sold the property covered under the settlement deed dated 11.05.2012 executed by the plaintiff in favour of the first defendant to and in favour M/s. Nakoda Foundation and Development Foundation Limited and M/s. Surakshi Traders Private Limited. On coming to know about the sale in favour of the aforesaid persons, the plaintiff has filed O.A. Nos. 7815, 7816, 7817 and 7817 of 2017 to implead them as party respondents in all the Original Applications namely O.A. Nos. 466, 467 and 468 of 2018 and also as defendants in the suit in C.S. No. 353 of 2015.

5. Thereafter, the Plaintiff has also filed O.A. No. 1187 of 2017 praying to grant an interim injunction restraining the defendants as well as the proposed defendants, who are subsequent purchasers of the property, from interfering with the plaintiff's peaceful possession and enjoyment of the 'Bedford House' situate at Door No.9, Old No.5, Raja Annamalai Road, Purasawalkam, Chennai - 600 084 morefully described in the Schedule item No.1 to 5 appended to Judge's summons including water and sewerage connection, power supply cable laid in the premises, corporation water, supply sump, water supply, bore well etc., and/or altering the physical features of the said property pending disposal of the application for impleading the proposed parties.

6. The learned single Judge, while dealing with the application in Original Application No. 1187 of 2017 held that the first and second defendants in the suit have deliberately alienated the suit property in favour of the proposed defendants. The learned single Judge further observed that the defendants 1 and 2, without seeking leave of this Court, has executed sale deed in favour of the proposed defendants especially when the settlement deed dated 11.05.2012 executed by the plaintiff in favour of the first defendant itself is the subject matter of the suit. Accordingly, the learned single Judge granted an interim injunction as prayed for in O.A. No. 1187 of 2017 without impleading the proposed 4th and 5th defendants as a party. At the same time, the learned single Judge directed the proposed 4th and 5th defendants to deposit a sum of Rs.10 lakhs each on or before 21.12.2017 towards costs for the unnecessary interference with the judicial process caused by their act in alienating or purchasing the property without seeking leave of the Court.

7. Aggrieved by the aforesaid Order of the learned single Judge, O.S.A. Nos. 22 and 28 are filed by the *pendente lite* purchasers of the suit property mainly on the ground that the learned single Judge, without impleading them as party respondents, had granted interim injunction against them along with the other defendants to deal with the property and further directed them to deposit a sum of Rs.10,00,000/- and it is not justifiable.

8. When O.S.A. Nos. 22 and 28 were listed before this Court for hearing on 07.03.2018, we have passed the following order:-

"Post on 26.03.2018 along with OSA SR No. 11841 of 2018 (now numbered as O.S.A. No. 129 of 2018)"

9. Accordingly, all the three appeals were posted before us. It is pertinent to mention that O.S.A. No. 129 of 2018 has been filed by the defendants 1 and 2 in the suit contending that on the basis of the settlement deed dated 11.05.2012 executed by the plaintiff in favour of the first defendant, she was put in possession of the suit property, mutated the revenue records in her favour and thereby she had an assertable right, title and interest in the property. While so, the appellants in O.S.A. No. 129 of 2018 would contend that the learned single Judge, without impleading the proposed defendants 4 and 5, ought not to have directed them to pay Rs.10 lakhs towards costs.

10. Subsequently, when the appeals are taken up for hearing, by order dated 10.07.2018, we have passed the following order:-

"Since the order which is going to be passed in these appeals totally depends on the order to be passed in Application Nos. 7815 to 7818 of 2017 in C.S. No. 353 of 2015, Registry is directed to call for Application Nos. 7815 to 7815 of 2017 in C.S. No. 353 of 2015 and post these Appeals along with the said Applications for hearing on 18.07.2018, after obtaining necessary orders from The Hon'ble The Chief Justice."

11. Pursuant to the order passed by the Honourable The Chief Justice, these appeals along with Application Nos. 7815 to 7815 of 2017 in C.S. No. 353 of 2015 are posted before us for hearing.

12. Today, when the appeals are taken up for hearing along with Application Nos. 7815 to 7817 of 2017, the learned counsel appearing for the contesting respondents submit that they have no objection for allowing these applications to implead (i) M/s. Nakoda Foundation and Development Private Limited and (ii) M/s. Surakshit Traders Private Limited as proposed respondents in O.A. No. 486 and 487 of 2015 as well as in the suit. Accordingly, Application Nos. 7815 to 7817 of 2017 are allowed as prayed for. The Plaintiff is directed to carry out the necessary amendments in the plaint.

13. Similarly, application No. 6031 of 2008 has been filed by the first defendant in the suit praying to condone the delay of 1152 days in filing the written statement. The learned counsel for the plaintiff has no objection for allowing this application. Accordingly, Application No. 6031 of 2018 is allowed as prayed for and the delay in filing the written statement is condoned.

14. During the course of hearing of these appeals, the newly impleaded defendants 4 and 5 in the suit have filed separate affidavit of undertaking expressly stating that (i) they will not alienate the subject matter of the property and (ii) they will not develop the property subject to a time line to be fixed for completing the trial of the suit within a period of three months. The affidavits of undertaking are recorded in O.A. Nos. 486 and 487 of 2015. It is left open to the parties to seek any variation of the same, if necessary, before the learned single Judge. It was also stated that as per the direction issued by the learned single Judge, the appellants in O.S.A. Nos. 22 and 28 of 2018 have deposited a sum of Rs.10 lakhs to the credit of O.A. No. 1187 of 2017 in OA Nos. 466 to 468 of 2015 in C.S. No. 353 of 2015 and they may be permitted to withdraw the amount with accrued interest.

15. At this stage, the learned counsel for the plaintiff objects to the claim of the newly impleaded defendants 4 and 5 to withdraw the amount of Rs.10 lakhs which they have deposited and he would submit that the amount may be continued to remain in deposit till the disposal of the suit. At the same time, the learned counsel for the plaintiff has no objection for issuing appropriate direction for disposal of the suit within a specified period to be fixed by this Court.

16. Having regard to the aforesaid facts, particularly, the affidavit of undertaking filed by the newly impleaded defendants 4 and 5 to the effect that they will not alienate the property in question or develop the property in question, we are of the view that the interim injunction granted by the learned single Judge shall be vacated. Accordingly, the interim injunction granted by the learned single Judge in O.A. No. 1187 of 2017 is vacated. At the same time, having regard to the facts and circumstances of the case, the direction issued by the learned single Judge to the newly impleaded defendants 4 and 5 to deposit a sum of Rs.10 lakhs shall continue until the disposal of the suit. The application bearing O.A. No. 1187 of 2017 is disposed of on the aforesaid terms.

17. As far as the time frame to be fixed for disposal of the suit, the first defendant has filed her written statement, which we have entertained, by condoning the delay in filing the written statement. The defendants 2 to 5 are required to file their written statement. The defendants 2 to 5 are directed to file their written statement in the suit on or before 17.08.2018 together with draft issues. We direct that the

suit shall be posted before the learned single Judge for hearing on 24.08.2018 for framing issues. We also request the learned single Judge to take up the suit for hearing, fix a time limit for disposal of the suit and to proceed further in accordance with law. Accordingly, all the Original Side Appeals are disposed of on the aforesaid term. No costs.

Sd/-

Assistant Registrar (CS IX)

Encl:xerox copy of Schedule of property

//True Copy//

Sub Assistant Registrar

To

1.The Sub Assistant Registrar,
Original Side,
High Court, Madras.

2.The Section Officer,
Account Section,
High Court, Madras.

3.The Section Officer,
Judicial Section,
High Court, Madras.

Copy to:The Registrar General
High Court, Madras.

+4cc to M/s.Aiyar & Dolia Advocate SR.No.53842

RSY(CO)

sm:13.8.2018

OSA Nos. 22, 28 & 129/2018
03-08-2018

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